

REMARKS

In the Final Office Action (Office Action)¹, the Examiner:

- (i) rejected claims 1-2, 4-6, 11-17, and 20-23 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,081,619 to Hashimoto et al. ("*Hashimoto*") and further in view of U.S. Patent No. 6,522,912 to Nakatani et al. ("*Nakatani*");
- (ii) rejected claim 7 under 35 U.S.C. § 103(a) as being unpatentable over *Hashimoto*, *Nakatani* and further view of U.S. Patent Publication No. 2003/0058111 to Lee et al. ("*Lee*"); and
- (iii) rejected claims 18-19 under 35 U.S.C. § 103(a) as being unpatentable over *Hashimoto*, *Nakatani* and further in view of U.S. Patent No. 5,703,368 to Tomooka et al. ("*Tomooka*").

By this Amendment, Applicant has amended claims 4-7, 11, 15-18, and 20-23.

Claims 1 and 2 have been cancelled. Claims 4-7 and 11-23 remain pending in the present application.

Applicant respectfully requests reconsideration and withdrawal of the rejections, and timely allowance of the pending claims for at least the reasons set forth below.

Rejection of Claims 4-7, and 11-23 under 35 U.S.C. § 103(a)

Applicant respectfully traverses the rejection of claims 4-7, and 11-23 under 35 U.S.C. § 103(a) as being unpatentable over *Hashimoto* in view of any combination of *Nakatani*, *Lee*, and *Tomooka*. A *prima facie* case of obviousness has not been established.

¹ The Office Action may contain statements characterizing the related art, case law, and claims. Regardless of whether any such statements are specifically identified herein, Applicant declines to automatically subscribe to any statements in the Office Action.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. *See* M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). “[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). The factual inquiries...[include determining the scope and content of the prior art and]...[a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). In rejecting a claim, “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III). In this application, a *prima facie* case of obviousness has not been established because the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the claimed combinations.

Independent claim 20, as amended, recites a combination including, for example, “storing attribute information and a behavior pattern model of [a] sensed object, wherein the **attribute information comprises** any one of: information based on **specific characteristics** of a human; information based on **specific characteristics** of a living creature other than a human; and information based on **specific characteristics** of a non-living object” (emphasis added). *Hashimoto* fails to teach at least these elements.

Hashimoto relates to upper and lower limit thresholds being set based upon the temperature of the floor surface detected by the sensor head 21. As shown in Fig. 17, if the value is larger than the upper limit threshold, 1 is given as binary-coded data; if the value is smaller than the lower limit threshold, -1 is given as the binary-coded data, and

0 is given in the other cases. When the output value from sensor head 21 is higher or lower than the threshold values, the existence of a human body is determined.

For example, "as a result of the process for interpolating binary-coded data, a human body having an overcoat in winter, a human body having an irregular temperature distribution and a human body mixedly having a low temperature region and high temperature region is not detected as two persons. Thus, an accurate detection of one person can be performed." *Hashimoto*, col. 22, ll. 23-28. As a result of these interpolation methods, "the human bodies can be detected, the moving direction can be determined and the number of passed persons can be counted with satisfactory reliability and accuracy." *Hashimoto*, col. 28, ll. 21-24.

However, there is no teaching in *Hashimoto* relating to "storing attribute information...compris[ing]...specific characteristics of a human...living creature other than a human ...[or] non-living object..." As discussed above, *Hashimoto* can merely detect the **presence** of a human being, the **number** of human beings in a certain area, or the **moving direction** of a human being (emphasis added). *Hashimoto* cannot detect any **specific characteristics** of a human being (i.e., sex of the human, size of the human, etc.) based on a stored behavior pattern model of the human being (emphasis added).

Neither *Lee* nor *Tomooka* compensate for the deficiencies of *Hashimoto* as discussed above. That is, neither *Lee* nor *Tomooka* teach or suggest at least "storing attribute information...compris[ing]...specific characteristics of a sensed human...living creature other than a human ...[or] non-living object..." as recited in claim 20.

In view of the above, the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the claimed invention. Moreover, the Office Action has failed to clearly articulate a reason why the claims would have been obvious to one of ordinary skill in view of the prior art. Therefore, a *prima facie* case of obviousness has not been established for independent claim 20. Accordingly, claim 20 is allowable.

Independent claims 16 and 17, although different in scope from independent claim 20, recite elements similar to those of claim 20. As such, for reasons similar to those discussed in regard to the rejection of claim 20, claims 16 and 17 are not anticipated by the cited references and are allowable. Claims 4-7, 11-15, 18, 19, and 21-23 are also allowable at least by virtue of their dependence from one of claims 16, 17, and 20.

Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections of claims 4-7 and 11-23 under 35 U.S.C. § 103(a).

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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